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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1984

Addendum

GABON*

* The information submitted by Gabon in accordance with the guidelines for the first part of the reports of States parties appears in the core document (HRI/CORE/1/Add.65). Annexes to the report are available for consultation in the files of the secretariat.

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Introduction

1. The submission of this initial report reflects the Gabonese Republic's desire to fulfil the international obligations which it has freely assumed. In accordance with article 40 of the International Covenant on Civil and Political Rights, States parties to the Covenant undertake to submit reports on the measures which they have taken to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

2. In submitting this initial report, the Gabonese Government would like to explain that, owing to a lack of human and material resources, the national offices responsible for periodic reports have been unable to submit them according to the schedule set by the Human Rights Committee. This report, therefore, is only the first of a series of periodic reports which will inevitably follow in pursuance of the instructions given in article 40 of the Covenant.

3. The initial report of Gabon to the Human Rights Committee is divided into two main sections: general information on the legal framework which ensures protection of the civil and political rights recognized in the Covenant, and information on each of the articles in the first three parts of the Covenant, particularly those relating to the implementation of each of the provisions of the various articles.

I. GENERAL LEGAL FRAMEWORK TO ENSURE THE PROTECTION OF CIVIL AND POLITICAL RIGHTS IN GABON

4. It must be emphasized that, in acceding to international sovereignty, the Gabonese Republic established itself as a democratic State based on the primacy of law and, in particular, the primacy of human rights as set forth and defined in the Declaration on the Rights of Man and the Citizen of 1791 and the Universal Declaration of Human Rights of 1948. However, a brief summary of the various stages in the evolution of Gabonese political institutions will facilitate a better understanding of the situation.

5. On achieving independence in 1960, Gabon was a multi-party democracy with several functioning political parties; however, this original system was progressively modified as a result of the political crisis of 1963/64 and the abortive military coup d'état of February 1964. Traumatized by this unfortunate event, the first President, while not breaking with the multi-party system, thought it best to adopt a different structure. However, the President and many Gabonese political figures believed that that form of democracy was responsible for the coup. The consequences of that belief were a concentration of power and the conditions for the emergence of a one-party system in line with the general tendency in sub-Saharan Africa at that time the goal being to preserve national unity in a State composed of different peoples. Nevertheless, it was not until 12 March 1968 that the multi-party system was eliminated from the Constitution with the creation of the Gabonese Democratic Party and a one-party system which lasted for 22 years.

6. Finally, in 1990, as a result of the wind of democracy blowing across sub-Saharan Africa, a national conference restored "multi-party democracy" in Gabon; that system was replaced by "pluralist democracy" after the constitutional amendment of 18 March 1994 (Act No. 01/94). However, every Constitution since independence has solemnly and officially affirmed the Gabonese people's commitment to the fundamental freedoms and human rights.

7. Despite the political upheavals which Gabon has experienced, this commitment was put into words in the preamble to the Constitution:

> "The Gabonese people, aware of its responsibility to history, inspired by a desire to ensure its independence and national unity and to organize its communal life in accordance with the principles of national sovereignty, pluralist democracy, social justice and republican law (Act No. 01/94 of 18 March 1994), solemnly affirms its commitment to human rights and fundamental freedoms as defined in the Declaration on the Rights of Man and the Citizen of 1791 and as enshrined in the African Charter of Human and Peoples' Rights of 1981 and the National Charter of Freedoms of 1990."

In order to guarantee these rights and freedoms, the authors of the Constitution have, at various times, expressed their desire to distinguish between, and separate, the powers. Today, the judiciary, the principal guarantor of rights and freedoms, is independent of the other powers and has the necessary legal means to guarantee the impartiality of its functioning. At the international level, this desire is expressed in article 113, paragraph 1, of the Gabonese Constitution.

8. Although the Universal Declaration of Human Rights of 1948 did not have the force of law at the time of its adoption, it has none the less exerted some influence on the evolution of contemporary international law since it has been the inspiration for several national constitutions and laws and many of the world's human rights conventions and treaties. These include the following conventions, to which Gabon is a party through accession or ratification: (a) the International Covenant on Economic, Social and Cultural Rights; (b) the International Convention on the Elimination of All Forms of Racial Discrimination; and (c) the Convention on the Elimination of All Forms of Discrimination against Women.

9. The International Covenant on Civil and Political Rights contains an important provision, not included in the Universal Declaration of Human Rights of 1948, which establishes the right of all peoples to self-determination and to the full and free disposition of their wealth and natural resources (art. 1).

II. INFORMATION CONCERNING THE ARTICLES OF THE COVENANT

10. This presentation of information concerning the articles of the Covenant will list all the fundamental human rights set forth in, and protected by, this international instrument, comparing them with Gabonese national law and stating the concrete measures taken to protect those rights.

Article 1: The right of peoples to self-determination

11. Since its accession to independence, the right of peoples to self-determination has been a constant in the positions taken by Gabon at the international level and a recurring theme in its diplomacy. For example, Gabon has always supported in every way, including financially and politically, and particularly in Africa, all movements for the liberation of peoples and territories which did not fully enjoy, or had been deprived of, the right to self-determination.

12. This right of peoples to self-determination and to control of their natural resources is among the major political and philosophical principles set forth in the preamble to the Gabonese Constitution.

Article 2: The right to non-discrimination

13. The problem of non-discrimination must be considered in its political, legislative and preventive aspects.

Political aspect

14. In acceding to international sovereignty, the Gabonese Republic became aware of the danger of discrimination for an emerging State. It is, therefore, essential for States to develop a genuine policy of combating discrimination through both legislative and preventive measures.

Legislative aspect

15. This policy is implemented in the Constitution, the first article of which stipulates that "The Gabonese Republic recognizes and guarantees the inviolable and imprescriptible human rights by which the public authorities are bound". This provision is followed by the measures set forth in paragraph 3, subparagraph 13.

Preventive aspect

16. Of prime importance is Gabon's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. That ratification has allowed our country to declare before the international community our commitment to taking all necessary legislative, administrative and judicial measures:

(a) To give effect to our commitment not to encourage, defend or support racial discrimination by any person or organization;

(b) To adopt immediate and effective measures, particularly in the fields of education, culture and information; and

(c) To combat prejudices leading to racial discrimination and to promote the purposes and principles of the Charter of the United Nations with regard to racial discrimination.

As a result of these measures, Gabon was able to establish a Ministry of Human Rights in 1987.

17. Gabon is nevertheless aware of the danger of discrimination in all its forms, in particular on grounds of race, ethnic origin, religion or political beliefs (see the preamble and preliminary title of the Gabonese Constitution devoted to fundamental human rights, Act No. 01/94 of 18 March 1994).

Article 3: The equality of all human beings

18. The equality of human beings is enshrined in the Constitution and has three aspects. All citizens are equal before the law, without any distinction as to origin, race, sex or religion. This equality is mandated by article 1, paragraphs 1, 2, 3 and 4 of the Constitution.

Articles 4 and 5: Measures restricting or derogating from rights

19. In any State, public order may be disrupted by uncontrolled movements of people, populations may be threatened by a real and imminent danger, or the country's security or integrity may be threatened. In such cases, the authorities must take the appropriate measures to restore order, eliminate the danger which threatens populations, or defend the security and integrity of the country.

20. But it is in the nature of such measures to restrict or derogate from fundamental human rights. For this reason, articles 4 and 5 of the International Covenant on Civil and Political Rights impose major obligations

on States parties. These measures must not be incompatible with the other obligations which international law imposes on States parties; they must not entail discrimination based solely on race, colour, sex, language, religion or social origin. They must be brought to the attention of the other States parties through the Secretary-General of the United Nations. No interpretation of the Covenant may permit actions aimed at the destruction or restriction of the rights and freedoms recognized in that legal instrument.

21. In order to implement these provisions, Gabonese law, aware of the seriousness of these measures and their effects on human rights, has developed an arsenal of legal regulations which take account of the need both to protect these rights and to maintain or restore public order. In particular, these regulations take the following forms: (a) maintenance of public order; (b) states of emergency; (c) requisitioning of people and goods; and (d) special powers authorized under article 25 of the Constitution.

(a) The maintenance and restoration of public order

22. Public order may be disrupted by any gathering or meeting of armed persons who threaten a breach of the peace. In such cases, the law enforcement bodies are legally obliged to restore order, using the ways and means authorized by law. The legal provisions in question are chapter IV of the Constitution, on breaches of public order and security and attacks on the authority of the State and the image of the Nation and, in particular, articles 79-97 of the Gabonese Penal Code (Act No. 21/63 of 31 May 1963, updated in November 1994).

(b) States of emergency and states of siege

23. The state of emergency and the state of siege are exceptional measures which are authorized by article 25 of the Constitution and may be implemented on the authority of the President of the Republic. The provisions of article 25 are strengthened by article 26 of the Constitution.

24. The law specifies that measures taken by the Government must be necessary for the maintenance or restoration of public order. Furthermore, while the Government may impose restrictions on the freedom of movement of individuals, the law states, in that regard, that "Extension of a state of emergency or state of siege for longer than 15 days may be authorized by an absolute majority vote of the National Assembly" (Constitution, art. 50).

(c) Requisitioning of people and goods

25. These are measures which may be taken in circumstances established by law in order to ensure continuity in the functioning of public services; the measures are regulated by law.

(d) Exceptional powers authorized under article 25 of the Constitution

26. These powers are granted to the President of the Republic, who, in the face of certain serious and imminent threats to the nation, may exercise them after taking certain precautions.

Article 6: The right to life

27. The right to life of the human person is explicitly recognized by article 1 of the Gabonese Constitution, which states that the human person is sacred and that the State has the obligation to respect and protect it. This provision means that, first, a person can be deprived of life only under conditions established by law, and secondly that even if execution is authorized, it may be carried out only under the conditions mandated by law.

28. A death sentence may be pronounced only by a legally-established court which existed before the crime was committed. However, it must be noted that, although the death penalty still exists (Penal Code, art. 9, Act No. 21/63 of 31 May 1963), no person condemned to death has been executed in over 10 years.

29. The right to grant pardons is one of the President of the Republic's powers under the Constitution (art. 23). As supreme justice, he makes wide use of this prerogative, either in response to the applications of individuals or, in a collective manner, on the occasion of major events (presidential elections, national independence day). The pardon granted may be partial or total.

Article 7: The right of every human person to physical and moral integrity

30. The right to physical and moral integrity is guaranteed by the Constitution (art. 1, para. 1). In pursuance of this provision, it is stated, as mandated by the Covenant, that "no one may be humiliated, mistreated or tortured, even while under arrest or in prison". While violations of this principle have been recorded, this has been a result not of a deliberate decision, but of the dilapidated state of jail cells and the lack of training of law enforcement officers, judges and prison staff. In view of these failings, there is an urgent need for Gabon, with the help of the international community and the United Nations specialized agencies, to establish a major on-the-job training programme at various levels of the law enforcement profession. This training should place particular emphasis on respect for the human person.

31. It must be remembered that, in Gabon, which is a State subject to the rule of law, arrest - a measure that consists in apprehending an individual in the name of the law in order to bring him to justice - is an act which can be performed only by a legally-authorized official.

Article 8: Forced labour, traffic in persons and slavery

32. The phenomenon of slavery is unknown in Gabon. However, since its accession to the various international instruments which deal with these matters, Gabon has developed appropriate legislation to prevent and punish any introduction of these practices to the country. In accordance with article 4 of the Labour Code (Act No. 3/94 of 21 November 1994), forced or compulsory labour is forbidden. The expression "forced or compulsory labour" refers to any work or service required of an individual under threat of any type of punishment and to which that individual has not agreed of his own free will.

Articles 9 and 10: The right to liberty and security of person

33. The right to liberty and security of the human person is sacred, according to the Gabonese Constitution. For this reason, the Penal Code (Act No. 21/63 of 31 May 1963, updated in November 1994) characterizes infringement of this right as abuse of authority if committed by a public servant, and a serious offence if committed by a private individual.

34. Article 1, paragraph 23, of the Constitution sets forth all the guarantees relating to detention (Acts Nos. 9/83 and 10/83 of 31 December 1983). The first Act limits the duration of pre-trial detention, while the second provides for compensation if detention is followed by dismissal, release or acquittal. In reality these two instruments demonstrate the same concern: to increase protection of civil rights by either prevention or making reparation for violations.

35. The reform which took place in 1983 was a sign of the Gabonese legislature's desire for increased control over the powers of judges. The right to compensation established by Act No. 10/83 recognizes the right of citizens to hold the State liable when the functioning of the legal system has resulted in "clearly abnormal and particularly serious harm". Furthermore, the measures provided for in article 1, paragraph 23, of the Constitution make it possible to limit, as fast as possible, attacks on the liberty and security of individuals.

Article 11: Imprisonment in civil cases

36. In civil claims, after a certain period of non-payment, the convicted offender may, on the application of the successful party to the suit, be subject to the apprehension procedure or, in other words, imprisonment.

Article 12: The right to freedom of movement

37. Article 1, paragraphs 3 and 11, of the Constitution grants all Gabonese citizens, and any other person legally present in the country, the right to travel and settle freely anywhere within the national territory. According to these provisions, this right may be restricted only by law and no one may be subjected to security measures except as provided by law. Gabon respects the principle that "No one shall be arbitrarily deprived of the right to enter his own country".

Article 13: The rights of refugees in Gabon

38. Gabon is a party to the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol and to the 1969 Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa. In pursuance of these two Conventions, in 1976 Gabon created a government agency responsible for dealing with the problems of refugees in Gabon (Ordinance No. 64/76 PR of 2 October 1976).

39. Refugees have the same rights as nationals with regard to health and education. In accordance with the international conventions, they are also given priority over other immigrants in employment-related matters. With a

view to improving conditions for the admission of refugees, Gabon recently made improvements in its legal system by revising the above-mentioned ordinance. For example, a complaint office and a national eligibility committee are being set up. Furthermore, a law on the status of refugees in the Gabonese Republic will establish regulations to govern their activity during their stay in Gabon. All these laws, which will soon be ready for promulgation, are aimed at providing a firmer basis for national policy in this area.

Article 14: The right to procedural guarantees

40. The right to procedural guarantees, established by this article of the Covenant, is a principle recognized by the Constitution and laws of Gabon. In this regard, it will suffice to recall the provisions of article 1, paragraph 8, which guarantees equality under the law, and article 67, which establishes the judiciary as the guardian of individual rights and freedoms.

41. All persons residing in Gabon who feel that their rights have been violated have access to the various courts. All hearings are, as a rule, public; however, closed hearings may be ordered in cases where publicity may jeopardize public order and morals. The presumption of innocence is a principle established by article 1, paragraph 4, of the Constitution.

(a) Defendant's right to be informed of the charges against him

42. As stated in article 42, paragraph C, of the Code of Criminal Procedure (Act No. 35/61 of 5 June 1961), the examining magistrate is authorized to charge anyone who has committed, or been an accomplice to, the acts under investigation.

(b) Right to the assistance of an interpreter

43. When the defendant does not speak French, the official language of the Gabonese courts, he is guaranteed the right to the assistance of an interpreter (Code of Criminal Procedure, art. 58, para. B).

(c) Right to adequate time for the preparation of a defence

44. On the question of adequate time for the preparation of a defence, the law stipulates that a minimum of eight days must elapse between the defendant's first appearance before the examining magistrate and his second appearance, which comprises an examination on the merits.

(d) Right to be tried within a reasonable time and without undue delay

45. When apprehended in flagrante delicto or taken into custody by direct summons, the defendant must normally appear at the next scheduled hearing.

(e) Defendant's right to be tried in his presence and to defend himself

46. The defendant must be physically present in all cases except civil cases where his presence is not indispensable.

(f) Defendant's right to examine or subpoena the witnesses of his choice

47. This right is a corollary to the right to a defence. Under article 55 of the Code of Criminal Procedure, the judge must summon all persons whose testimony appears likely to help elicit the truth. Witnesses may also testify voluntarily.

(g) Defendant's right not to be compelled to testify against himself

48. This is a consequence of the defendant's right not to be forced to confess guilt.

(h) Right of juvenile defendants to receive special treatment

49. This right is recognized and guaranteed under Gabonese law. The justification for this policy is that an easily-influenced minor must be given a chance to reform and, if possible, must not be subjected to imprisonment, during which contact with hardened criminals may influence his social behaviour. Articles 143-147 of the Code of Criminal Procedure establish the procedure to be applied to delinquent or morally endangered minors.

(i) Defendant's right to have his conviction reviewed by a higher tribunal

50. This right, together with that of unrestricted access to appeal procedures in criminal cases, is guaranteed under Gabonese law. Articles 158-174 of the Code of Criminal Procedure grant this right to the defendant, the claimant for criminal indemnification or the party civilly responsible and the public prosecutor.

(j) Right to monetary compensation in cases of arbitrary or illegal detention

51. This situation is covered by Act No. 10/83 of 31 December 1983. A decree governs the procedure for indemnification in cases where pre-trial detention has resulted in damage that is clearly abnormal and of particular seriousness.

(k) Right not to be tried again for a criminal offence after being acquitted and released

52. Gabonese law implicitly recognizes the general legal principle of res judicata.

Article 15: The legality of criminal offences and penalties

53. An offence is defined as an individual's act, or failure to act, which is covered and punished by a law. Gabonese criminal law respects the legal principle expressed in the Latin adage Nullum crimen, nulla poena sine lege, according to which any act which constitutes a serious, ordinary or minor offence, together with the applicable penalties, must be defined. For example, in criminal cases, article 1 of the Penal Code (Act No. 21/63 of 31 May 1995) deals with the nature of a serious offence. Ordinary and minor offences are covered by article 2 of the Penal Code (Act No. 21/63 of 31 May 1995).

Article 16: The right to recognition as a person before the law

54. Legal personality is the very foundation of human rights, since it is the basis for determining whether an individual does or does not have rights and whether he is entitled to exercise them. For this reason, article 1, paragraph 2, of the Gabonese Constitution states that everyone has a right to the free development of his personality, provided that he does not infringe the rights of others or break the law. In Gabonese positive law, legal personality is acquired only after birth and where viability is not subject to doubt.

Article 17: The right to a private life and to privacy

55. The right to a private life and to privacy is understood to mean the individual's right to live as he wishes in an inviolable home and to the means of interpersonal communication guaranteed and protected by law. All these rights are recognized under Gabonese law. For example, article 1, paragraphs 11 and 12, of the Constitution state that the home is inviolable.

Article 18: The right to freedom of thought, conscience and religion

56. This, too, is a constitutional right and is explicitly guaranteed under article 1, paragraph 2, of the Constitution.

Article 19: The right to freedom of opinion and expression

57. Gabon has recently introduced a multi-party system. Article 1, paragraph 2, of the Constitution guarantees freedom of conscience, thought, opinion, expression, communication and religious practice. Since the introduction of the multi-party system in 1990, no one may be harassed for his opinions; freedom of expression is guaranteed. With regard to the written press, this declaration has led to the development of a free press and of a number of privately-owned newspapers. The special status of media professionals is on the current agenda of the National Assembly.

Article 20: Incitement to, or propaganda for, hatred or war

58. In the preamble to its Constitution, the Gabonese Republic declares its commitment to the fundamental human rights as defined in the Declaration on the Rights of Man and the Citizen of 1791 and the Universal Declaration of Human Rights of 1948. These ideals and rights have no other goal than to advocate and maintain world peace and peace between peoples. It is for this reason that, in article 1 of the Constitution, the Gabonese people and the State recognize the existence of these rights as the basis for peace and justice in the world.

59. The maintenance of peace within the country, and in the world, is the basis of all of Gabon's national and international policies. At the national level, this commitment is expressed, above all, in the Constitution, article 49 of which states that only the National Assembly may declare war.

Article 21: The right of peaceful assembly

60. The right of peaceful assembly is a corollary of freedom of association, which is recognized to all Gabonese citizens under article 1, paragraph 13, of the Constitution.

Article 22: The right to freedom of association and the right to organize

61. The right to freedom of association is fundamental to any democracy. This right is therefore recognized by article 1, paragraph 13, of the Constitution, which establishes the principle of freedom of association.

62. Chapter IV of the Penal Code (Act No. 21/63 of 31 May 1963), concerning breaches of the peace and threats to public safety or the authority of the State (arts. 79-97), lists potential offences and penalties relating to associations, since the Constitution itself stipulates that no restrictions may be placed on the exercise of the right to form associations other than those mandated by law.

63. With regard to the right to organize, article 1 (para. 13, subpara. 1) of the Constitution defines the right of every individual to establish a labour union. Title VI, chapter I, section I of the Labour Code (Act No. 3/44 of 21 November 1994) establishes the substantive and procedural conditions for the establishment of labour unions.

Article 23: Family rights of the individual

64. Gabon considers the family to be the basic unit of the national community and the very foundation of society. For this reason, article 1, paragraph 14, of the Constitution states that marriage and the family are the natural and moral basis for the human community and places them under the protection of the State. The right to marry and to found a family is officially recognized to both men and women by the Civil Code. Men and women have the same rights with regard to the institution of marriage, which is placed under the protection of the State.

Article 24: The fundamental rights of the child

65. In 1993, Gabon ratified the 1989 Convention on the Rights of the Child. The Government is in the process of setting up national committees responsible for the implementation of this Convention while taking into account the specific characteristics of the country and the formulation of a national plan of action for the protection, survival and development of the child.

66. The child has a fundamental and, above all, constitutional place in Gabonese law. Under the Constitution, the State is required to protect young people from moral and social dangers, and the family is required to raise them. Article 1, (paras. 16, 17, 18 and 19) of the Constitution deals with the health, education and schooling of children.

Article 25: The right to take part in the conduct of public affairs and to equal access to public service

67. In its preliminary title, "Fundamental principles and rights" (art. 1) several provisions of the Constitution are devoted to the guarantee and protection of this right.

Article 26: Equality of all before the law and equal protection under the law

68. The equality of all citizens before the law is enshrined in article 1, paragraph 13, of the Constitution. Paragraph 13, subparagraph 3, condemns all acts of racial, ethnic or religious discrimination, and any regionalist propaganda which may threaten the internal or external security of the State is punishable by law. The same egalitarian principle is defined and guaranteed in the laws governing the organization of justice in Gabon.

Article 27: The rights of minorities

69. The question of the rights of members of ethnic, religious or linguistic minorities has always posed a problem in the United Nations system. A priori, there is no such problem in Gabon, all populations being integrated both legally and socially.

CONCLUSION

70. At the end of this initial report, it must be stressed that the Gabonese Government has always been conscientious in fulfilling the international commitments which it has undertaken. However, all types of problems have hindered the implementation of this commitment, inter alia:

(a) The gap between the legal provisions of modern law, which is based on French (avant-garde) law, and the weight of economic, political and sociological realities (resistance to the law), which can be eliminated only with time; and

(b) The fundamental nature of Gabon, which is a developing country and therefore lacks the necessary organization and human resources to translate into reality the above-mentioned political commitment.

LIST OF ANNEXES*

1. Ordinance No. 64/76 PR of 2 October 1976 establishing a Central Refugee Bureau.

2. Act No. 3/91 of 26 March 1991, amended by Act No. 001/94 of 18 March 1994.

3. Organization Act No. 9/94 of 17 September 1994 establishing the organization, composition, jurisdiction and functioning of the Court of Justice, the Courts of Appeal and the courts of first instance.

4. Organization Act No. 10/94 of 17 September 1994 establishing the organization, composition, jurisdiction and functioning of the Administrative Tribunal.

5. Act No. 11/94 of 17 September 1994 establishing the organization, composition, jurisdiction, functioning and rules of procedure of the Court of Audit.

6. Act No. 12/94 of 16 September 1994 establishing the magistrates' statute.

7. Act No. 7/94 of 16 September 1994 establishing the organization of the judiciary.

8. Acts Nos. 9/83 and 10/83 of 31 December 1983.

9. Act No. 35/61 of 5 June 1961.

10. Act No. 21/63 of 31 May 1963 (updated in November 1994).

11. Act No. 3/94 of 21 November 1994.

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* These annexes are available for consultation in the Centre for Human Rights secretariat.